

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)	GRADE	AFSN/SSAN
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TYPE GEN	PERSONAL APPEARANCE	X	RECORD REVIEW
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	No		
	X		

VOTE OF THE BOARD				
HON	GEN	UOTHC	OTHER	DENY
				X**
				X**
				X**
				X**
				X**

ISSUES	A94.39 A94.05	INDEX NUMBER	A66.00
EXHIBITS SUBMITTED TO THE BOARD			
1 ORDER APPOINTING THE BOARD			
2 APPLICATION FOR REVIEW OF DISCHARGE			
3 LETTER OF NOTIFICATION			
4 BRIEF OF PERSONNEL FILE			
COUNSEL'S RELEASE TO THE BOARD			
ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE			
TAPE RECORDING OF PERSONAL APPEARANCE HEARING			

HEARING DATE	CASE NUMBER
07 Feb 2011	FD-2009-00489

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE.

Case heard in Washington, D.C.

Advise applicant of the decision of the Board, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.

Names and votes will be made available to the applicant at the applicant's request.

*Reason and Authority
+Reenlistment Code

TO: SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	FROM: SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3RD FLOOR ANDREWS AFB, MD 20762-1001
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2009-00489

GENERAL: The applicant appeals for upgrade of discharge to honorable, to change the reason and authority for the discharge, and to change the reenlistment code.

The applicant was offered a personal appearance before the Discharge Review Board (DRB) but declined and requests that the review be completed based on the available service record.

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

FINDING: The Board denies the upgrade of the discharge, change of reason and authority for discharge, and change of reenlistment code.

The Board finds that neither the evidence of record nor that provided by applicant substantiates an impropriety that would justify a change of discharge. However, based upon the record and evidence provided by applicant, the Board finds the applicant's reason and authority for discharge inequitable.

ISSUES:

Issue 1. The record indicates that the applicant was discharged for Misconduct—Drug Abuse. He received an Article 15 for wrongful use of marijuana. The record shows that the applicant admitted to one-time use but did not have prior use; applicant stated that he had been influenced by peer pressure. After review of the record, the Board found no evidence to indicate that the applicant did not know right from wrong or that in his time in service was unaware of the Air Force policy of zero tolerance to drug use. The Board found the negative aspects of the willful misconduct outweighed the positive aspects of the applicant's performance and concluded that the discharge was appropriate.

Issue 2. Applicant contends discharge was inequitable because it was too harsh. The Board concluded that the negative aspects of the applicant's service outweighed the positive contributions he made in his brief Air Force career. The characterization of the discharge received by the applicant was found to be appropriate.

CONCLUSION: The Discharge Review Board concludes that the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and the applicant was provided full administrative due process.

In view of the foregoing findings, the Board further concludes that there exists no legal or equitable basis for upgrade of discharge and determines the discharge should remain unchanged.

Attachment:
Examiner's Brief

**APPLICATION FOR THE REVIEW OF DISCHARGE OR DISMISSAL
FROM THE ARMED FORCES OF THE UNITED STATES**

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

*Form Approved
OMB No. 0704-0004
Expires Aug 31, 2006*

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0004), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

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PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1553; E.O. 9397.

PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual.

ROUTINE USE(S): None.

DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.

1. APPLICANT DATA *(The person whose discharge is to be reviewed).* **PLEASE PRINT OR TYPE INFORMATION.**

a. BRANCH OF SERVICE <i>(X one)</i>		<input type="checkbox"/> ARMY	<input type="checkbox"/> MARINE CORPS	<input type="checkbox"/> NAVY	<input checked="" type="checkbox"/> AIR FORCE	<input type="checkbox"/> COAST GUARD
b. NAME <i>(Last, First, Middle Initial)</i>			c. GRADE/RANK AT DISCHARGE		d. SOCIAL SECURITY NUMBER	
			Airman			
2. DATE OF DISCHARGE OR SEPARATION <i>(YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)</i>		4. DISCHARGE CHARACTERIZATION RECEIVED <i>(X one)</i>			5. BOARD ACTION REQUESTED <i>(X one)</i>	
20000216		<input type="checkbox"/> HONORABLE			<input checked="" type="checkbox"/> CHANGE TO HONORABLE	
		<input checked="" type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS			<input type="checkbox"/> CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS	
		<input type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS			<input type="checkbox"/> CHANGE TO UNCHARACTERIZED <i>(Not applicable for Air Force)</i>	
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION		<input type="checkbox"/> BAD CONDUCT <i>(Special court-martial only)</i>			<input type="checkbox"/> CHANGE NARRATIVE REASON FOR SEPARATION TO:	
Security Forces Moody Air Force Base Valdosta GA		<input type="checkbox"/> UNCHARACTERIZED			<input checked="" type="checkbox"/> R.E. Code	
		<input type="checkbox"/> OTHER <i>(Explain)</i>				

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST *(Continue in Item 14. See instructions on Page 3.)*

I was with a group of Airman who committed the act and my base had a new commander that had a zero tolerance and so I was guilty by association and told the truth when asked about the situation. I also took a drug test at the time of my situation and the results came back that I was negative for drug use. In my short career in the United States Air Force this was the only incident I had and when I was faced with the situation I did show the core values and told the truth.

7. (X if applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON (YYYYMMDD) AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.

8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE: *(Continue in Item 17. If military documents or medical records are relevant to your case, please send copies.)*

9. TYPE OF REVIEW REQUESTED *(X one)*

<input checked="" type="checkbox"/>	CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR <i>(counsel/representative)</i> WILL NOT APPEAR BEFORE THE BOARD.
<input type="checkbox"/>	I AND/OR <i>(counsel/representative)</i> WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.
<input type="checkbox"/>	I AND/OR <i>(counsel/representative)</i> WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO <i>(enter city and state)</i> <small><i>(NOTE: The Navy Discharge Review Board does not have a traveling panel.)</i></small>

10.a. COUNSEL/REPRESENTATIVE <i>(if any)</i> NAME <i>(Last, First, Middle Initial)</i> AND ADDRESS <i>(See Item 10 of the instructions about counsel/representative.)</i>	b. TELEPHONE NUMBER <i>(Include Area Code)</i>
	c. E-MAIL
	d. FAX NUMBER <i>(Include Area Code)</i>

11. APPLICANT MUST SIGN IN ITEM 13.a. BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate and relationship by marking a box below.

<input type="checkbox"/> SPOUSE	<input type="checkbox"/> WIDOW	<input type="checkbox"/> WIDOWER	<input type="checkbox"/> NEXT OF KIN	<input type="checkbox"/> LEGAL REPRESENTATIVE	<input type="checkbox"/> OTHER <i>(Specify)</i>
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12.a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE <i>(Forward notification of any change in address.)</i>	b. TELEPHONE NUMBER <i>(Include Area Code)</i>
	c. E-MAIL
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13. CERTIFICATION. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. *(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)*

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	2009/12/08	FD-2009-00489

14. CONTINUATION OF ITEM 6, ISSUES (If applicable)

Yes I was wrong to have been in the situation but I think I showed what the military would like to see in its members and that is tell the truth when faced with making a mistake.

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15. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS (If applicable)

16. REMARKS (If applicable)

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.

ARMY

Army Review Boards Agency
Support Division, St. Louis
9700 Page Avenue
St. Louis, MO 63132-5200
(See <http://arba.army.pentagon.mil>)

NAVY AND MARINE CORPS

Naval Council of Personnel Boards
720 Kennon Street, S.E.
Room 309 (NDRB)
Washington Navy Yard, DC 20374-5023

AIR FORCE

Air Force Review Boards Agency
SAF/MRBR
550-C Street West, Suite 40
Randolph AFB, TX 78150-4742

COAST GUARD

U.S. Coast Guard
Commandant (G-WPM)
2100 Second Street, S.W. Room 5500
Washington, DC 20593

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550-C Street West, Suite 40
Randolph AFB, TX 78150-4742

COAST GUARD

U.S. Coast Guard
Commandant (G-WPM)
2100 Second Street, S.W. Room 5500
Washington, DC 20593



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 347TH WING (ACC)
MOODY AIR FORCE BASE, GEORGIA

7 June 2000

MEMORANDUM FOR AMN

347 SFS

FROM: 347 SFS/CC

SUBJECT: Notification Memorandum - Discharge of Airman

1. I am recommending your discharge from the United States Air Force for drug abuse. The authority for this action is AFI 36-3208, paragraph 5.54. If my recommendation for discharge is approved, your service will be characterized as honorable or under honorable conditions (general). I am recommending that your service be characterized as under honorable conditions (general).

2. My reason for this action is as follows:

You, did, at or near Valdosta, Georgia on or about 18 March 2000, wrongfully use marijuana. For this offense, you received nonjudicial punishment pursuant to Article 15, UCMJ, dated 2 June 2000. Your punishment included reduction to the grade of airman, restriction to Moody Air Force Base, Georgia for 14 days and 14 days extra duty (Atch 1).

Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising Special Court-Martial (SPCM) jurisdiction or a higher authority will decide whether you will be discharged or retained in the Air Force and, if you are discharged, how your service will be characterized. If you are discharged, you may be ineligible for reenlistment in the Air Force.

3. You have the right to consult counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult with the **Area Defense Counsel** in Bldg 5107, extension 3421, on 7 Jun 00 at 1400. Please take your copy of this Notification Memorandum and the attachments with you to your appointment. You may consult civilian counsel at your own expense.

4. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me within **three** duty days after receipt of this notification letter, unless you request and receive an extension for good cause shown. **If your appointment with defense counsel is beyond three duty days after receipt of this letter, you should contact the Area Defense Counsel office at extension 7-3421 to obtain a delay request.** I will send any statement(s) you submit to the separation authority.

5. If you fail to consult counsel or to submit statements in your own behalf, your failure will constitute a waiver of your right to do so.

Global Power for America

6. You have been scheduled for a medical examination. You must report to the Moody Air Force Base Hospital, **Physical Exams** Section, Bldg 3296, on 8 Jun 00 at 1300 for the examination. **This is a mandatory appointment. Be sure to bring your medical records to this appointment.**

7. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement. A copy of AFI 36-3208, is available for your use in the orderly room.

8. Execute the attached acknowledgment and return it to me immediately (Atch 2).

.....acknowledgment

Attachments:

1. Supporting Documents, Reasons for Discharge
AF Form 3070, 2 Jun 00 (w/atch)
2. Receipt of Notification Memorandum



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 347TH SUPPORT GROUP (ACC)
MOODY AIR FORCE BASE, GEORGIA

14 June 2000

MEMORANDUM FOR 347 WG/CC

FROM: 347 WG/JA

SUBJECT: Legal Review of AFI 36-3208 Discharge Action: Amn
347th Security Forces Squadron (347 SFS)

1. I have reviewed the subject discharge action and find it legally sufficient. Captain 347 SFS/CC, recommends that the Respondent, Amn be involuntarily separated from the Air Force under honorable conditions (general) in accordance with AFI 36-3208, paragraph 5.54, for drug abuse. I concur. Probation and rehabilitation (P&R) is not an option when the reason for discharge is drug abuse.

2. In reviewing this action, I find that there is a legally sufficient basis to separate Amn from the Air Force with an under honorable conditions (general) discharge without P&R.

a. Basis for discharge: AFI 36-3208, paragraph 5.54, states that drug abuse is incompatible with military service and airmen who abuse drugs, one or more times, are subject to discharge for misconduct. In this case, there is sufficient evidence that Amn Koch has abused drugs. Specifically, he wrongfully used marijuana on or about 18 Mar 00. As a result, Amn received nonjudicial punishment under Article 15, UCMJ, for a violation of Article 112a, UCMJ. Under section 5.55, airmen must be discharged unless they meet all seven of the following retention criteria:

- (1) Drug abuse is a departure from the member's usual and customary behavior;
- (2) Drug abuse occurred as the result of drug experimentation (a drug experimenter is one who has illegally or improperly used a drug for reasons of curiosity, peer pressure, or other similar reasons);
- (3) Drug abuse does not involve recurring incidents, other than drug experimentation as defined above;
- (4) The member does not desire or intend to engage in drug abuse in the future;
- (5) Drug abuse under all the circumstances is not likely to recur;

(6) Under the particular circumstances of the case, the member's continued presence in the Air Force is consistent with the interest of the Air Force in maintaining proper discipline, good order, leadership, and morale; and

(7) Drug abuse did not involve drug distribution.

In a memorandum dated 9 June 00, Amn _____ requested a waiver of discharge based on the seven requirements for retention, and his military attorney, Capt _____ submitted supporting memorandum. He also submitted statements from his father, uncle, SSgt _____ and A1C _____ Amn _____ argument, however, fails to satisfy the sixth requirement because he did not demonstrate that his continued presence in the Air Force is consistent with maintaining proper discipline, good order, leadership, and morale. The members of the SFS are charged with the duty of investigating, and ultimately preventing, violations of the Uniform Code of Military Justice. Amn _____ breached this duty when he used an illegal drug. Because of his position as a SFS member, his commander believes that retention would have a negative effect on discipline, order and morale. Moreover, the statements from his father and uncle are not persuasive because these individuals have no personal knowledge of the effect that retention will have on discipline, order, and morale of the squadron. Likewise, the statements from SSgt _____ and A1C _____ do not directly address this point, and A1C _____ has only known Amn _____ for slightly more than two months.

b. Should Amn _____ be discharged? Because the presence in the military environment of persons who engage in drug abuse seriously impairs accomplishing the military mission, airmen found to have abused drugs must be discharged unless they meet all seven of the retention criteria listed above. In accordance with AFI 36-3208, paragraph 5.55.2.2, the burden of proving that retention is warranted rests with the airman. Accordingly, Amn _____ should be discharged from the Air Force.

c. Service characterization: This notification discharge can be characterized as honorable or under honorable conditions (general).

(1.) Honorable: AFI 36-3208, paragraph 1.18.1, states that an honorable discharge should be given when the airman's service has met Air Force standards of acceptable conduct and the member's service is so meritorious that any other characterization would be inappropriate. As Amn _____ record indicates, this is certainly not the case, and he should therefore not receive an honorable discharge. In addition, a member who is discharged under paragraph 5.54 (drug abuse) can only receive an honorable discharge if the General Court-Martial Convening authority approves such a characterization.

(2.) General: Paragraph 1.18.2 states that characterization of an airman's service as under honorable conditions (general) is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh the positive aspects of his military record. Amn _____ military record indicates that he has been in the Air Force for less than one year, and does not contain any information that would suggest